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Regulatory Affairs

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July 18, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: 1997 Annual Access Tariff Filings
CC Docket No. 97-149

Dear Mr. Caton:

This ex parte communication is to bring to the attention of the Federal Communications Commission a possible problem with the 1997 Annual Access Tariff Filings presently under investigation. TCG is concerned that many ILECs may not have properly implemented the requirements of the Commission's recent Access Charge Reform Order.

At paragraph 176 of its Access Charge Reform Order (FCC 97-158, released May 16, 1997), the Commission stated that:

"In order to encourage transport customers to increase the efficiency of their transport networks quickly, we will require incumbent LECs to waive certain non-recurring charges until six months after the three part rate structure becomes mandatory. [I]ncumbent LECs shall not assess any nonrecurring charges for service connection when a transport customer converts trunks from tandem-switched to direct-trunked or orders the disconnection of overprovisioned trunks."

The Access Charge Reform Order also recognizes that implementation of new transport rate structures is needed because the existing structure "inhibits the development of competitive alternatives to incumbent LEC tandem-switched transport." Access Charge Reform Order at paragraph 179. The Commission therefore has adopted new rate structures to encourage the development of local competitive alternatives, and its NRC waiver is intended to minimize the costs of the network reconfigurations that these changing structures will induce.

It is clear from the Commission's order that the Commission intends that CLECs as well as ILECs could be the providers of the

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new direct trunked transport services, and there is certainly nothing in the Commission's order that requires that the ILEC must provide all transport services for the NRC waiver to be effective. However, it is not at all clear from the 1997 Annual Access Tariff Filings of the ILECs whether they intend to extend the NRC waiver to IXCs which choose to substitute CLEC-provided transport services for ILEC provided tandem transport services.

For example, BellSouth's tariff states that the NRC waiver is only applicable if customers "maintain the same point of presence (POP) location" and that "the connect ASR and the disconnect ASR must be placed at the same time." BellSouth Proposed Tariff Section 6.7.1. US West offers the NRC waiver only where "the same customer premises, service type and Interface Type are maintained..." US West Proposed Tariff Section 6.7.1. Southwestern Bell also states that "The customer must maintain the same customer premises location." Southwestern Bell Proposed Tariff Section 6.8.2. Similar references to retention of "customer premises" and to simultaneous ordering can be found in other tariffs as well.

TCG is concerned that the ILECs may attempt to limit the application of the Commission's NRC waiver to instances in which the ILEC remains as the end to end provider of transport services. Such a position could be based on a claim that, as far as the ILEC is concerned, the IXC can only retain the same customer premises if the ILEC continues to provide end to end transport services to its POP. An ILEC might assert that an IXC requesting a rearrangement of an existing tandem transport service from an end to end ILEC service to a direct end office connection using a CLEC's collocation arrangement is no longer taking service from the same "customer premises," and that its new "customer premises" is the CLEC collocation cage, even though the IXC's switch remains unmoved.

Absent affirmative confirmation from the ILECs that they will in fact offer NRC waivers to IXCs choosing to use CLEC services, the proposed tariffs leave open the possibility that the ILECs will engage in such anti-competitive practices. While TCG believes such practices would be wrong, and that under a Section 208 complaint the Commission would certainly uphold the IXC's right to a waiver of the NRCs, such a state of affairs adds uncertainty, as well as potential expense, to IXC business decisions. It would be far better for the Commission to advise the ILECs early and clearly that the NRC waiver is to be extended to services provided by CLECs, and that their tariffs must be interpreted in a manner consistent with that requirement..

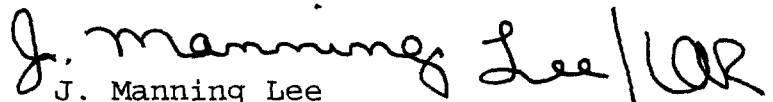
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Additionally, requirements for simultaneous execution or submission of orders, while perhaps understandable in a situation in which all services are provided by a single ILEC, could lead to problems where a CLEC and an ILEC need to coordinate the rearrangement of trunks. Because all activities do not take place within the same entity, this requirement for simultaneous activities could be interpreted to allow arbitrary denials of NRC waiver requests. Moreover, the requirement for simultaneous orders and execution does not appear to meet any legitimate business need other than to limit the number of customers and trunks eligible for the waiver.

TCG therefore encourages the Commission to ensure that its fundamental policy objectives in its Access Charge Reform Order are not frustrated by the ambiguous -- or even contradictory -- language in the ILEC implementing tariffs.

Should there be any questions with respect to this matter, please contact the undersigned.

Very truly yours,


J. Manning Lee
Vice President
Regulatory Affairs

cc: James D. Schlichting
Richard Lerner